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THE EFFECT OF THE UNIFORM WAREHOUSE RECEIPTS ACT.

To the American Warehousemen's Association primarily belongs the credit of the Uniform Warehouse Receipts Act. Since the adoption by the Commissioners on Uniform State Laws of the final draft of the act in the summer of 1906 that Association has worked industriously to secure the law's enactment by the legislatures of the various states and in this it has been signally successful. Although the Association has thus given liberally both of its time and money it must not be inferred that the enactment of the Uniform Receipts Act principally helps the warehouseman; an examination shows the interests of all those who deal with warehousemen and with warehouse receipts have been most carefully guarded.

In 1890 the American Bar Association passed a resolution recommending the passage by the legislatures of the several states of an act providing for the appointment of commissioners to draft uniform laws relating to certain specified subjects. A short time prior thereto the Legislature of the State of New York had passed an act making provision for the appointment of commissioners to make an examination of the subjects of marriage and divorce to the end that uniform laws be enacted in regard thereto. Since that time forty-eight states and territories have appointed commissioners and they have held twenty-two annual meetings. The efforts of the commissioners have been devoted largely to the drafting of uniform acts relating to commercial law and have resulted in the enactment in many of the states of the following: The Uniform Negotiable Instrument's Act, approved by the conference in 1896, and now in force in thirty-seven states; the Uniform Warehouse Receipts Act, approved by the conference in 1906, and now in force in twenty-two states; the Uniform Bills of Lading Act, approved by the conference in 1909, and now in force in nine states; and the Uniform Sales Act, approved by the conference in 1910, and now in force in nine states.

In 1904 the commissioners on Uniform State Laws in their annual conference, first took up the consideration of the Uniform Warehouse Receipts Act, and carefully considered a tentative draft, which had been prepared largely by Professor Samuel Williston of the Harvard Law School in which work I had assisted. Many

changes were made and during the following year the amended draft was carefully considered by the American Warehousemen's Association, by a committee representing the American Banker's Association, and by members of the committee on commercial law of the Commissioners on Uniform State Laws. These meetings resulted in still further changes and improvements in the act made in the light of commercial usage and legal requirements. In 1906 at the annual conference of the Commissioners and after further consideration the act was formally adopted and recommended to the legislatures of the various states for enactment. Since that time the law has been passed by Congress to be in force in the District of Columbia and by the legislatures in the following states: California, Colorado, Connecticut, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia and Wisconsin. The act is also in force in the Philippine Islands.

The Uniform Warehouse Receipts Act is divided into five parts and contains sixty-two sections. Part 1 relates to the issuance of the receipts; part 2 to the obligations and rights of warehousemen upon their receipts; part 3 to the negotiation and transfer of receipts; part 4 to criminal offenses; and part 5 contains rules of interpretation and definitions. It is the purpose of this article to deal briefly with the provisions of the Receipts Act and especially with the changes which it makes in the common law rules affecting the subjects to which it relates.

In respect of who may issue warehouse receipts, the first section of the act provides they may be issued by "any warehouseman." A warehouseman by section fifty-seven is defined to be a person lawfully engaged in the business of storing goods for profit. One who conducts the business of renting safe deposit vaults is a warehouseman within the meaning of this section.¹ Section two does not require that the receipts be in any particular form, but it does provide that certain statements must appear thereon. These statements are the location of the warehouse, date of issue, the number, whether the goods will be delivered to bearer, a specified person or his order, the rate of storage charges, a description of the goods or of the package containing them, the signature of the warehouseman which may be made by

¹New Jersey Title Guarantee & Trust Co. v. Rector (1910) 76 N. J. Eq. 587.

his agent, if the warehouseman owns the goods in whole or in part the fact of such ownership must be shown, and finally the receipt must contain a statement of the amount of advances made and liabilities incurred for which the warehouseman claims a lien. If such amount is unknown at the time of the issuance of the receipt this provision is satisfied if a statement of the fact that advances have been made or liabilities incurred and the purpose thereof, appears upon the receipt. A warehouseman is made liable to any person injured for all damage caused by the omission from a *negotiable* receipt of any of the required terms. All of the requirements save the two last named are in accordance with universal custom and usage. It was thought best to add these two requirements because experience showed that trouble had arisen by the issuance of receipts for goods in which the warehouseman claimed an interest and for goods against which advances had been made and liabilities incurred where there was no mention of such facts. It is pointed out in *New Jersey, Title Guarantee & Trust Co. v. Rector*² that the penalty is only applicable in the case of negotiable receipts. In that case the receipt was not negotiable and it did not contain two of the required statements. It was urged that such omission took the receipt out of the terms of the act and hence the warehouseman could not avail himself of the provisions of sections seventeen and eighteen in regard to compelling adverse claimants to interplead and affording the warehouseman a reasonable opportunity to determine the validity of adverse claims. The court held that a receipt or memorandum given by a warehouseman to a depositor, which shows that the property described therein was received from the depositor for safe keeping, in the ordinary course of his business, is a sufficient warehouse receipt under the terms of the Receipts Act, to require the depositor and an adverse claimant to interplead and settle their respective rights to the property, although the receipt does not contain all of the terms set out in the second section of the act. By section fifty-three it is made a criminal offense for a warehouseman to issue a negotiable receipt for goods of which he is the owner, either solely or jointly with others without a statement thereon of such ownership, the punishment for which shall be imprisonment not exceeding one year or a fine not exceeding \$1000.00. It will be observed from the foregoing, that while the act states that all receipts must show certain facts,

²*Supra.*

nevertheless it is only in the case of negotiable receipts that a penalty is imposed for failure to comply with this provision. The act permits the insertion of any other terms and conditions in the receipt than those specified, provided they be not contrary to the act and that they in no wise impair the obligation of the warehouseman to exercise that degree of care, in the safekeeping of the goods, which a reasonably careful man would exercise in regard to similar goods of his own. It was felt that public policy required a warehouseman be not permitted to contract for a lesser degree of liability than that which the courts have for many years imposed upon him. In *Levine v. De Wolff & Co.*³ it was held this requirement made no change in the common law doctrine.

By sections three and four a fundamental distinction is made between a negotiable and a non-negotiable receipt, in that the former represents the goods themselves and the latter is simply evidence of the contract of bailment. If a warehouseman issues a non-negotiable receipt which does not bear upon its face the words "non-negotiable" or "not negotiable," the holder of the receipt who purchases for value supposing it to be negotiable, may at his option treat it as such and the warehouseman shall be held liable to the same effect as if the receipt had been negotiable. This requirement is in accordance with legislation to be found in many of the states and is designed not only to prevent fraud, but to cause the warehouseman to be exceedingly careful in the issuance of his receipts.

The second part of the act which treats of the obligations and rights of warehousemen upon their receipts and the following part, pertaining to the negotiation and transfer thereof constitute the most important parts of the act and it was in their preparation that the most difficulty was encountered.

Part two provides that in the absence of a lawful excuse a warehouseman is bound to deliver the goods upon demand made by the holder of the receipt, or by the depositor, if the demand is accompanied by an offer to satisfy the warehouseman's lien, an offer to surrender the receipt, if negotiable, with the proper endorsements thereon, and a willingness to sign an acknowledgment that the goods have been delivered, if so requested by the warehouseman. For failure to deliver under the conditions stated the burden is placed upon the warehouseman to establish the existence of a lawful excuse for his action. While it has been

³(1909) 78 N. J. L. 306.

customary for warehousemen to ask, when goods were withdrawn, that an acknowledgment of their delivery be signed, this is the first instance, of which I have knowledge, where this was required by statute. In connection with these requirements it should be here stated, that the "holder" of a receipt as referred to, means a person who has both actual possession of such receipt and a right of property therein and hence were it not for the following section a warehouseman would be liable in the event he delivered the goods to a thief who had possession of the receipt. It is there provided that a warehouseman is justified in delivering goods, subject to the provisions of the three sections which follow, to one who is entitled to the possession thereof, or his agent, or to a person named in a non-negotiable receipt, or to one bearing written authority from such person, and finally to a person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate endorsee. Hence it is seen that the warehouseman is justified in making delivery in some cases in which he would not be bound to deliver. Thus, in the case mentioned of the thief, if the warehouseman innocently delivered the goods upon presentation of a negotiable receipt, under the conditions stated he would be protected. The three following sections, to which reference has been made, provide that the warehouseman shall be liable as for conversion; if he delivers otherwise than as authorized, and even though he delivers as authorized, he shall be liable if prior to making a delivery he had been requested on behalf of the person lawfully entitled to the goods not to make delivery, or if he had information that the delivery about to be made was to one not lawfully entitled to the goods; that the warehouseman shall be liable, for his failure to take up and cancel a negotiable receipt when the goods are delivered to any person who purchases such receipt for value and in good faith, and that all negotiable receipts must show partial deliveries. This is accompanied by a provision making the warehouseman liable for his failure to note partial deliveries upon such receipt. By section thirteen provision is made in regard to altered receipts, which is declaratory of the common law.

In the case of a lost or destroyed negotiable receipt it is provided that a court of competent jurisdiction may order the delivery of the goods upon the giving of bond to protect the ware-

houseman from liability which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding, and the court is given authority, in its discretion, to order the payment of the warehouseman's reasonable cost and counsel fees. But it is further provided that even such delivery under the order of the court will not relieve the warehouseman from liability to a person to whom a negotiable receipt has been negotiated for value and without notice of the court proceedings or of the delivery of the goods. Since by the act negotiable receipts represent the goods themselves, it will be readily seen that the greatest care was necessary in framing provisions in regard to the delivery of the goods without the cancellation of the receipt, and in this connection it should be noted that by section fifty-two of the act, it is made a criminal offense to issue an additional negotiable receipt without the word "duplicate" appearing thereon. The warehouseman is precluded from setting up title in himself as a defense for refusing to deliver the goods according to the terms of the receipt, unless such title be derived from a transfer made by the depositor at the time of or subsequent to the deposit for storage. This provision states the common law requirements. Where there are several claimants to the goods a warehouseman is given a reasonable time to ascertain the validity of the adverse claims or to institute legal proceedings to compel all claimants to interplead, and, except as provided in the case of adverse claimants, no right or title of a third person shall be a defense to an action brought against a warehouseman for failure to deliver the goods in accordance with the terms of the receipt.

The warehouseman, as previously noted, may incorporate in the receipt either a description of the goods or of the packages containing them, and the act holds him liable for the truthfulness of his description, even though there be an innocent mistake made in such description. With the exception of fungible goods which is defined to mean goods of which any unit is from its nature, or by mercantile custom, treated as the equivalent of any other unit, the warehouseman is required to keep all goods separate from those of other depositors or from other goods of the same depositor for which a separate receipt has been issued so as to permit at all times identification and delivery of the goods deposited. In the case of fungible goods the warehouseman is made liable to each depositor for the care and delivery of his share of such goods to the same extent as if the goods had been kept separate. This is the recognized

American law on this subject. Where a negotiable receipt is outstanding for goods properly delivered to a warehouseman the goods cannot be reached by attachment or garnishment unless the receipt be first surrendered to the warehouseman or its negotiation enjoined.

The act further provides that in no case shall the warehouseman be compelled to deliver the actual possession of the goods until the negotiable receipt is surrendered or impounded by the court. While this protection of the goods is essential where negotiable receipts are outstanding, the act provides that a creditor whose debtor is the owner of a negotiable receipt, shall be entitled to such aid from the courts by injunction and otherwise in attachment of such receipt or in satisfying the claim by means thereof, as is allowed at law and equity in regard to property which cannot readily be attached or levied upon by ordinary means. It is but right, since negotiable receipts are made to represent the goods themselves, that the act, after having provided the goods were not subject to attachment, should make provision giving the creditor the fullest opportunity possible to reach the receipt.

While under the common law a warehouseman's lien embraces only storage charges, many of the states by statute have extended the lien to cover charges for insurance, labor, transportation and other such items for which the warehouseman should be similarly protected. The Receipts Act follows these statutes. Under its terms the lien of the warehouseman includes the items mentioned and also all charges for the preservation of the goods, for money advanced, interest, labor, weighing, cooperating and "for other charges and expenses in relation to such goods," also for expenses of notice, and advertisement of sale and for the sale of goods where there has been a default in satisfying the warehouseman's lien. In the case of a negotiable receipt the lien extends only to storage charges accruing subsequent to its issuance unless other proper charges are enumerated thereon. Subject to the above provision the lien may be enforced against all goods regardless of when deposited, which belong to the person who is liable as debtor, for the claims in regard to which the lien is asserted, and also against all goods belonging to others, but deposited by the person liable as debtor upon the claim, provided his possession at the time of deposit was such that he could have validly pledged the goods with one taking in good faith. The common law rule that the lien is lost by surrender of possession of the goods or by an unjustified

refusal to deliver on demand is embodied in section twenty-nine of the act. Sections thirty-one and thirty-two contain the common law rules in regard to a warehouseman's right to refuse to deliver until his lien is satisfied and that the possession of the lien does not preclude the warehouseman from other remedies allowed by law to a creditor against his debtor. The two following sections pertain to the procedure of satisfying the warehouseman's lien by a sale of the goods and the sale of perishable and hazardous goods. The next section, thirty-six, which is the last section of part two, provides that where goods have been sold under the conditions of the two preceding sections, the warehouseman shall not thereafter be liable even though a negotiable receipt be outstanding. It will be readily seen such a provision was requisite although it necessarily qualifies the rights of the holder of such a receipt. It was felt that the provisions in regard to the notices of sale and advertisements were such that the likelihood of a holder of a negotiable receipt not obtaining prior knowledge of the sale was exceedingly remote.

In the drafting of the third part of the act relating to the negotiation and transfer of receipts the Negotiable Instruments Law was largely followed. Certain changes were manifestly necessary because of the inherent difference between a negotiable warehouse receipt and a negotiable promissory note. Mercantile usage in respect of the two is evidence of this difference. It is provided in the first section of this part of the act that like a negotiable note, a negotiable warehouse receipt may be negotiated by mere delivery if drawn to bearer or if drawn to a specified person and subsequently endorsed in blank. As a matter of fact I have never heard of a single instance of a warehouse receipt being issued to bearer, but it was thought best to make this provision in case such practice should ever arise. This section also contains provision by which a receipt negotiable by delivery may, by subsequent endorsement, be restricted, as in the case of bills and notes, so as to be negotiated only by endorsement. The provisions of the Negotiable Instruments Law, and as sanctioned by custom with warehouse receipts, in respect to endorsements in blank or to a specified person are included in the act. Both negotiable and non-negotiable receipts may be *transferred* by delivery to a purchaser or donee (following the Negotiable Instruments Law in regard to the distinction between negotiation and transfer), but a non-negotiable receipt cannot be negotiated, and the endorsement of such a receipt gives the transferee no additional right.

The provisions of the Receipts Act in respect of who may negotiate a negotiable receipt show a distinction between bills and notes in that receipts are not accorded full negotiability. A finder or a thief may not negotiate. In substance it is provided that such a receipt may be negotiated by the owner or by

"any person to whom the possession or custody of the receipt has been intrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been intrusted, or if at the time of such intrusting the receipt is in such form that it may be negotiated by delivery."

It was deemed wise to provide this distinction which found justification in mercantile usage. But negotiation is not impaired by the fact that it was a breach of duty on the part of the person making the negotiation or by the fact that the owner of the receipt was induced by fraud, mistake or duress to intrust the possession of the receipt to the person negotiating the same provided the person who so took the receipt or a person subsequently taking did so without notice of the breach of duty, fraud, mistake or duress and paid value therefor.

In accordance with the purpose that the negotiable receipt should represent the goods themselves, or all of the rights of the lawful depositor in the goods, the act provides that a person to whom such a receipt is negotiated thereby acquires such title to the goods as the person negotiating to him had or had ability to convey and such title as the depositor had or had ability to convey, to a purchaser in good faith for value and the direct obligation of the warehouseman to hold the goods for him as he had agreed in the receipt with the depositor. It is further provided that where one has sold or pledged the goods or the negotiable receipt issued for them, but retains possession of such receipt, the subsequent negotiation thereof to one in good faith, for value and without notice of the previous sale or pledge shall have the same effect as though the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

The transferee of a receipt gets title to the goods subject to the terms of any agreement with the transferrer and if the receipt be non-negotiable the transferee may notify the warehouseman of the transfer and thus obtain the obligation of the warehouseman to hold the goods for the transferee according to the terms of the receipt, but prior to such notification such right may be defeated by the levy of an attachment upon the goods by a creditor of the

transferror or by a notification to the warehouseman of a subsequent sale of the goods by the transferror. Like the provisions in respect of bills and notes, in the case of the transfer of a negotiable receipt, in the absence of proof of a contrary intention, the transferee may compel the transferror to endorse.

The warranties imposed upon one who negotiates or transfers a receipt by endorsement or delivery are like those found in the Negotiable Instruments Law except that the Receipts Act contains the further warranty that the one negotiating or transferring has the right to transfer title to the goods and that the goods are merchantable or fit for a particular purpose in all cases where such warranties would have been implied had the contract between the parties been one to transfer without the receipt the goods themselves. There is a further distinction between the act and the Negotiable Instruments Law to be found in the forty-fifth section which declares that an endorser shall not be liable for any failure on the part of a prior endorser or of the warehouseman to fulfil their respective obligations. One who holds a receipt as security, by accepting payment of the debt, does not thereby warrant the genuineness of the receipt nor the quantity nor quality of the goods represented.

The last section of the third part of the act undoubtedly goes further than any prior existing law. It provides that the rights of a purchaser of a negotiable receipt in good faith, for value shall not be defeated by a seller's lien or the right of stoppage in transitu and that a warehouseman shall not be obliged to deliver nor justified in delivering the goods to an unpaid seller unless the receipt be first surrendered for cancellation. These provisions were logically essential to facilitate the negotiation of negotiable receipts.

The fourth part of the act, as previously mentioned, declares certain acts to be crimes and provides for their punishment. Six of the seven sections are directed against prohibited acts on the part of the warehouseman and all are designed for the protection of the public in its dealings with warehouse receipts. Two of these provisions have already been referred to, *viz*: the issuance of duplicate negotiable receipts not so marked and the issuance of a negotiable receipt against goods belonging in whole or in part to the warehouseman, without this fact being shown upon the receipt. The remaining sections relate to the issuance of a receipt when the goods are not on deposit, a receipt containing a false statement, the delivery of goods by a warehouseman without obtaining the

surrender of the negotiable receipt, and where a person deposits goods to which he has not title or which are mortgaged and obtains therefor and negotiates a negotiable receipt without disclosing his want of title or the existence of the mortgage. The penalties provided vary from imprisonment not exceeding five years or a fine not exceeding five thousand dollars, to imprisonment not exceeding one year or a fine not exceeding one thousand dollars. The purposes of this part of the act is obviously to safeguard a compliance with its essential requirements.

The rules of interpretation are contained in the fifth and last part of the act and are the usual provisions found in such codifications, *viz*: that the act shall be so construed as to effectuate its general purpose to make uniform the laws of those states which enact it and that in any case not provided for, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause, shall govern.

The act concludes with definitions, provision that it shall not apply to receipts delivered prior to its taking effect, that inconsistent legislation is repealed, when the act shall take effect and that it may be cited as the "Uniform Warehouse Receipts Act." In *State v. Gambrill*⁴ it was held an indictment under a prior act prohibiting the issuance of a warehouse receipt while a receipt was outstanding, which act provided a penalty different from that in the Receipts Act, was bad on demurrer since the repeal provision in the latter act contained no saving clause and hence repealed the earlier act.

It is undoubtedly true that means, subject to proper safeguards, which facilitate the representation of property in the form of money or its equivalent thus enabling its free passage from one to another, promote prosperity. It is likewise true that our dual system of government with its federal and state sovereignties has in a measure retarded business intercourse. Those who have taken an active interest in the Uniform Warehouse Receipts Act have hoped that its passage by the several states would accomplish a real public service. The progress thus far made seems to justify a realization of that hope.

BARRY MOHUN.

WASHINGTON, D. C.

⁴(1911) 115 Md. 506.